

## REMARKS

The Office Action dated November 6, 2003 has been received and carefully noted. The following remarks are submitted as a full and complete response thereto. Claims 1-29 are still pending, where claims 16-29 were withdrawn by the Examiner pursuant to a restriction requirement. Applicants acknowledge that claims 7 and 13-15 were indicated as containing allowable subject matter and Applicants wish to thank the Examiner for so indicating. Claims 1-15 are again submitted for consideration.

Claims 1-3, 6, 8 and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by *Spinney et al.* (U.S. Patent No. 5,390,173). Claims 4, 5 and 10-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Spinney et al.* The above rejections are respectfully traversed according to the remarks that follow.

The present invention is directed, according to claim 1, to a network switch for network communications. The network switch includes at least one first data port interface, the at least one first data port interface supporting a plurality of first data ports transmitting and receiving data at a first data rate and at least one second data port interface, the at least one second data port interface supporting a plurality of second data ports transmitting and receiving data at a second data rate. The network switch also includes a flow control unit, wherein at least one of the first data ports and at least one of the second data ports are linked together with a plurality of ports on a second network

switch forming a trunk group that is configured by the flow control unit to statistically distribute a data load transmitted across the trunk group.

The present invention is concerned, in part, with trunking in a network switch. Trunking involves logically treating several links or connections between two devices as a single link. One embodiment of the present invention is illustrated in Fig. 20 where multiple ports are tied together so that a logical link would have a greater capacity than any one port on the network switch. It is respectfully submitted that the prior art cited fails to teach or suggest all of the elements of claims 1-15.

*Spinney et al.* is directed to a packet data communication network employs a local switch, router or bridge device functioning to transfer packets between segments of a larger network. When packets enter this device, an address translation is performed to generate local source and destination addresses which are much shorter than the globally-unique addresses contained in the packet as dictated by the protocol. While the Office Action alleges that *Spinney et al.* teaches all of the elements of some of the claims, it is respectfully asserted that *Spinney et al.* fails to disclose what has been alleged.

In the anticipation rejection, it is alleged that *Spinney et al.* provides several controller interfaces for buses having various bit-widths. The rejection appears to indicate that these interfaces with the buses are the same as the data port interfaces recited in claim 1. However, Applicants respectfully submit that these interfaces are quite different. *Spinney et al.* discloses "ports 13" and it is possible that *Spinney et al.* may contain an interface for these many ports, but the controller interfaces are not the

port interfaces for controlling the data received and transmitted from the ports. Even if some equivalent to the instant data port interfaces were found in *Spinney et al.*, there is no disclosure in *Spinney et al.* of ports that send and received data at first and second data rates. Thus, at least this element of claim 1 is not taught or suggested by *Spinney et al.*

Additionally, the rejection appears to suggest that bit-width of an interface is somehow equivalent to a data rate at which data is sent and received by the port. The data rate for a bus is based on the number of lines and a clock for the bus. For buses having the same clock, a wider bus would have a greater data rate. However, in *Spinney et al.*, it is not clear the various buses operate under a same or similar clock, so any teaching of differing data rates from the presence of buses having multiple widths is absent. Thus, multiple data port interfaces operating at differing data rates of claim 1 are not taught or suggested by *Spinney et al.*

Next, the Office Action alleges that column 7, lines 28-31, of *Spinney et al.* discloses that “one of the controllers [sic] several functions. Specifically, it provides programmable data rate limits for the transmission of data packets.” This is cited in connection to claim 1 recitations of “a flow control unit” and the linking of ports to statistically distribute a data load transmitted across the trunk group. However, nowhere in *Spinney et al.* is there any disclosure of a trunk group or some equivalent thereof. As such, Applicants respectfully assert that this element of claim 1 is not taught by *Spinney et al.*

Additionally, the section of *Spinney et al.* discussed above is directed to controlling the rate of packets being sent to the switch processing engine to prevent the transmit queue length from becoming excessive. This is quite different from what is recited in claim 1, namely “wherein at least one of the first data ports and at least one of the second data ports are linked together with a plurality of ports on a second network switch forming a trunk group that is configured by the flow control unit to statistically distribute a data load transmitted across the trunk group.” There is no apparent disclosure of linking of ports together to distribute the data load across the trunk group. Thus, this element of claim 1 is also not taught or suggested by *Spinney et al.*

Given the above-discussed deficiencies of *Spinney et al.*, Applicants respectfully assert that the rejection of claim 1 as being anticipated by *Spinney et al.* is improper for failing to teach all of the elements of claim 1. Similarly, Applicants respectfully assert that claims 2-15, which depend from claim 1, should be allowed for at least their dependence on claim 1.

Claims 4, 5 and 10-12 were also rejected over *Spinney et al.* separately in an obviousness rejection of those claims under 35 U.S.C. §103. In that rejection, the Office alleges that “changes in the data rate would have been obvious to one of ordinary skill in the art at the time that the invention was made [because] [i]ncreased data rates are a desirable feature of any communications device, as they are invariably a consideration that an engineer would take into account and maximize.” However, there is no consideration in the rejection of whether the communications system of *Spinney et al.*

would be even capable of having a Gigabit Ethernet port interface, or operating at data rates of 10 Mps or 100 Mps or 1000 Mps. The desire to have faster speed components is proffered as motivation but there is no suggestion in the rejection that one of ordinary skill in the art would be cognizant of the specific interface and data rates recited in claims 4 and 10-12. For at least this reason, Applicants respectfully assert that the rejection under 35 U.S.C. §103(a) is improper for failing to make out a *prima facie* case of obviousness and should be withdrawn.

Additionally, the motivation provided in the obviousness rejection is merely an “obvious to try” rationale. To establish a *prima facie* case of obviousness, there must be some motivation or suggestion, either in the references themselves or within the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The fact that a given modification would have been “well within the ordinary skill in the art” is not sufficient to establish a *prima facie* case of obviousness. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Just because an aspect of the invention may be “obvious to try” does not provide the proper motivation under §103. For this additional reason, Applicants respectfully assert that the obviousness rejection is improper and should be withdrawn.

As such, Applicants respectfully assert that the rejections of the claims are improper for failing to teach or suggest all of the elements of claims 1-15. Applicants respectfully request the allowance of all claims and allow the present application to proceed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicants undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,



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